

DAVID CHIU, State Bar #189542
City Attorney
YVONNE R. MERÉ, State Bar #173594
Chief Deputy City Attorney
TARA M. STEELEY, State Bar #231775
JOHN H. GEORGE, State Bar #292332
KAITLYN M. MURPHY, State Bar #293309
SABRINA M. BERDUX, State Bar #248927
ABIGAIL H. WALD, State Bar #309110
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-4655 (Steeley)
(415) 554-4223 (George)
(415) 554-6762 (Murphy)
(415) 554-3929 (Berdux)
(415) 554-3901 (Wald)
Facsimile: (415) 554-4699
E-Mail: tara.steeley@sfcityatty.org
john.george@sfcityatty.org
kaitlyn.murphy@sfcityatty.org
sabrina.m.berdux@sfcityatty.org
abigail.wald@sfcityatty.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE ROE, an individual; MARY ROE, an individual; SUSAN ROE, an individual; JOHN ROE, an individual; BARBARA ROE, an individual; PHOENIX HOTEL SF, LLC, a California limited liability company; FUNKY FUN, LLC, a California limited liability company; and 2930 EL CAMINO, LLC, a California limited liability company,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a California public entity,

Defendant.

Case No. 4:24-cv-01562-JST

**JOINT CASE MANAGEMENT STATEMENT
FOLLOWING CASE MANAGEMENT
CONFERENCE (ECF NO. 108)**

Trial Date: August 10, 2026

Following the September 29, 2025 Case Management Conference, the Court ordered the parties to file a statement addressing the necessity of any post-briefing evidentiary hearing and specific proposals on how to structure such a proceeding if the Court finds one is necessary. ECF No. 108. The parties' positions follow.

Plaintiffs' Position:

Plaintiffs respectfully submit a proposal for a revised briefing schedule to address the concerns raised at the last Case Management Conference ("CMC") hearing of September 29, 2025. In short, Plaintiffs request the opportunity to investigate the evolving nature of the City's paraphernalia policy and representations made in the City's opposition, then the parties submit their respective reply and sur-reply. This would do away with the complications of a live hearing, unless the court would like to conduct such a hearing.

This proposal was provided to the City on Monday, September 29, 2025.¹ The City declined. Plaintiffs submit the following proposal for the Court's consideration.

Plaintiffs wish to take the depositions of the following declarants identified in Defendants opposition through the month of October:

- Dr. Susan Philip
- Lt. Ayman Young
- Commander Biggs
- If time permits, Plaintiffs may wish to depose additional declarants identified in the City's opposition.

In addition, Plaintiffs seek to depose the following third-party witnesses:

- Joe Wilson, Executive Director of the Hospitality House
- Tyler TerMeer, M.D., CEO of SF AIDS Foundation
- Alternatively, the person most knowledgeable regarding the distribution of smoking supplies at those two entities.

¹ The proposal to the City provided different briefing dates than those contained here but the concept of a reply and sur-reply following depositions without the need for a live hearing was rejected.

1 These witnesses have either submitted declarations or the City made representations regarding
 2 their relationship with, and the conduct of, SF AIDS and Hospitality House. These witnesses'
 3 testimony bears directly on the core issues of the preliminary injunction motion—namely, the nature
 4 and funding of the distribution of smoking supplies by the City's contractors. Plaintiffs believe that
 5 these representations should be subject to testing through deposition testimony for the Court's benefit,
 6 and that this process would avoid the complications discussed at the recent CMC. As Plaintiffs
 7 discussed at the last CMC, this new distribution policy has been evolving at the time the moving
 8 papers were filed. The current briefing schedule provided Defendants the opportunity to depose
 9 Plaintiffs, for some nearly the full seven hours, regarding their specific declarations, but more broadly
 10 the entirety of their claims, backgrounds, credibility, and any other matter to inform its opposition.
 11 Plaintiffs request the same opportunity given the evolving nature of the nuisance, the City's conduct
 12 and the representations made in the opposition.

13 Therefore, Plaintiffs submit that the briefing schedule be adjusted so Plaintiffs may conduct
 14 this discovery and then inform additional briefing for the Court's benefit. This removes the need for a
 15 live evidentiary hearing that Plaintiffs agree presents more complications than benefits.

16 Plaintiffs kindly request the Court accommodate a new briefing schedule as laid out below.

- 17 • Plaintiffs conduct the depositions through the month of October.
- 18 • Plaintiffs will file a Reply that incorporates the testimony elicited from the depositions by
 19 **November 7, 2025.**
- 20 • The City may then file a Sur-Reply limited to deposition testimony and any new matters
 21 raised in Plaintiffs' Reply by Plaintiffs by **November 21, 2025.**

22 Currently, Plaintiffs' reply is due **Monday, October 6, 2025.** Plaintiffs respectfully request an
 23 immediate response from the Court, given the immediacy of the deadline to file their reply. Plaintiff's
 24 initial proposal was provided on September 29, 2025. The City provided its substantive position and
 25 proposal on October 1, 2025. Plaintiff's position, as laid out in this CMC, was provided to the City on
 26 October 1, 2025. Plaintiff's intention is to file this CMC statement on October 2, 2025, as soon as
 27 possible.
 28

Defendant's Position:**A. The Parties Agree The Court Should Vacate The Reserved Hearing Dates**

The parties now agree that no evidentiary hearing is necessary and would present more complications than benefits. Accordingly, the City respectfully submits that the Court should not take four days from its busy calendar to hold a hearing the parties agree is not necessary to resolve the pending motion and instead set the preliminary injunction for traditional oral argument from counsel on Monday October 27, or at the Court's convenience, and release the remaining days the Court has reserved on its schedule.

B. No Revised Briefing Schedule is Needed

In place of their initial request for an evidentiary hearing, Plaintiffs' portion of this joint statement pivots and requests the Court instead: (1) extend the deadline for Plaintiffs to file their reply for one month from October 6 to November 7 so that Plaintiffs can conduct additional discovery; (2) preemptively permit Plaintiffs to include new evidence and argument drawn from that as-of-yet uncondacted discovery in their reply brief; and (3) include a sur-reply with their motion. This request should be rejected as procedurally improper, unnecessary, and prejudicial.

Plaintiffs request to modify the briefing schedule is untimely and procedurally improper. The Court—several months ago—set the briefing schedule for the preliminary injunction in its scheduling order on a timeline the parties jointly proposed. ECF No. 99. Any party seeking to modify the schedule must therefore demonstrate good cause. Fed. R. Civ. P. 16(b)(4). Plaintiffs have not addressed this demanding standard. Nor is it appropriate for Plaintiffs to seek this kind of relief—a request to modify the briefing schedule for a reply brief due in two business days—through a joint statement following the Case Management Conference.

Implicit in Plaintiffs' request for the Court to hold their preliminary injunction in limbo while they conduct additional discovery is the presumption that Plaintiffs will rely on this new discovery in their reply brief. No further discovery is needed for Plaintiffs to submit a reply, and the City would object to any attempt by Plaintiffs to misuse their reply brief to introduce evidence or argument missing from their initial motion. "As this Court has made clear with some regularity, it ordinarily 'does not consider new facts or argument made for the first time in a reply brief.'" *DEPCOM Power*,

1 *Inc. v. CSUN Solar, Inc.*, No. 18-CV-00729-JST, 2019 WL 13110783, at *2 (N.D. Cal. July 11, 2019)
 2 (declining to consider new facts or argument); see also *Sheets v. F. Hoffmann-La Roche Ltd.*, No. 18-
 3 CV-04565-JST, 2018 WL 6428460, at *2 n. 2 (N.D. Cal. Dec. 7, 2018) (sustaining objection to new
 4 evidence submitted with reply”); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2013 WL
 5 3339443, at *3 (N.D. Cal. July 1, 2013) (“The Court concludes that Manpower’s objections to the
 6 reply argument and facts are valid and disregards the arguments and facts at issue for the purpose of
 7 resolving this motion.”); *Lil’ Man in the Boat, Inc. v. City & County of San Francisco*, No. 17-CV-
 8 00904-JST, 2019 WL 1756347, at *2 (N.D. Cal. Apr. 19, 2019) (“Because the argument was made for
 9 the first time on reply, the Court need not consider it”).

10 Plaintiffs’ statement that the City’s policy was “evolving” when Plaintiffs filed their motion on
 11 August 25 is not well taken. Plaintiffs filed this case in March 2024 and stipulated to the timing for
 12 this motion over four months ago—*after* they had learned about the “new” policy through deposition
 13 testimony. Even Plaintiffs’ own motion states this policy went into effect in April, four months before
 14 their filed their motion. ECF No. 101 at 8 (confirming the policy went into effect April 30). Plaintiffs
 15 have also had a year to conduct discovery—and have been seeking City records via public records
 16 requests for even longer. Now, having had an enormous amount of time to gather the discovery they
 17 thought necessary, Plaintiffs seek to amend the briefing schedule to conduct the very discovery they
 18 could have taken (*e.g.*, information about the finalized April policy) and to apparently expand the
 19 arguments in their August 25, 2025 preliminary injunction motion to include the very information and
 20 arguments they could have—but did not—develop in discovery months before filing their Motion.

21 Plaintiffs are free to take whatever depositions they choose consistent with FRCP 30 and to use
 22 that evidence at trial, but they have no basis to simultaneously seek the extraordinary remedy of a
 23 preliminary injunction and then delay the filing deadline for their reply in support of that motion
 24 because they did not timely pursue the discovery they now wish they had sought. The Court should not
 25 permit Plaintiffs, who have had ample time and opportunity to fully explore the issues in their motion,
 26 to alter the briefing schedule to submit new evidence in a reply because they now want to conduct
 27 additional discovery they chose not to take earlier.

C. Proposed Hearing Structure

As stated above, Plaintiffs withdrew their request for an evidentiary hearing and the City agrees one is not necessary to resolve the pending motion. To the extent the Court is considering holding an evidentiary hearing on its own accord, the City respectfully requests that the Court take a first look at Plaintiffs' Motion and the City's Opposition before ordering such a hearing. This is because the papers show no evidentiary hearings are required to resolve Plaintiffs' motion based on the claims, arguments, and relief Plaintiffs seek. The issues Plaintiffs raise in their motion (nuisance claim based solely on the distribution of safer smoking supplies) are substantially narrower than those alleged in the FAC, which also covered ADA claims and several further theories of nuisance liability. The City's Opposition shows that Plaintiffs failed to meet their burden on threshold issues including standing, and that there are purely legal bases to deny Plaintiffs' motion in its entirety, including that the conduct at issue is expressly authorized by statute and therefore cannot constitute a nuisance as a matter of law.

Plaintiffs bore the burden to demonstrate they are entitled to the extraordinary remedies they seek. Their motion has not met that standard and so holding an evidentiary hearing now would prejudice the City by permitting Plaintiffs an opportunity to improperly shift their evidence and arguments and based on Plaintiffs' statements thus far it is clear they seek to do so. Preliminary injunctions are not uncommon and traditionally do not require evidentiary hearings. There is no reason to treat this case as an outlier.

Out of an abundance of caution and to directly address the issues that the Court put to the parties at the last case management conference, to the extent the Court determines an evidentiary hearing is necessary to resolve the motion, the City requests the Court consider the following procedures to manage the hearing.

1. Pre-Hearing Schedule

The City proposes the following pre-hearing timeline:

- The parties to exchange a witness and exhibit list containing (1) the names and sequence of any witnesses it seeks to call for cross-examination; (2) the anticipated subject of the witnesses' testimony; and (3) any documents (other than those offered exclusively for impeachment)

1 to be used with each witness by no later than noon on Monday **October 13, 2025**. No party shall be
 2 permitted to call a witness it did not list in its pre-hearing disclosures. No party shall be permitted to
 3 introduce as an exhibit (except for purposes of impeachment) any document that is not listed in its pre-
 4 hearing disclosures.

5 • The parties meet and confer to resolve any objections to the witness list or exhibit
 6 identification by noon on Wednesday **October 15, 2025**.

7 • If any disputes remain, the parties shall file their objections, including any motions in
 8 limine based on the anticipated subject matter of witness testimony, with the Court by 5:00 p.m. on
 9 Friday **October 17, 2025**. Motions in limine shall not exceed 5 pages. Any opposition is due by 5:00
 10 p.m. on Wednesday, October 22, 2025, and shall not exceed 5 pages. Replies are not permitted without
 11 leave of Court.

12 • The Court will hold a pre-hearing conference on Friday **October 24, 2025** at 2:00 p.m.

13 **2. Hearing Proceedings**

14 Questioning is limited to no more than 30 minutes of cross-examination per witness with an
 15 opportunity for 30 minutes of re-direct examination from the party that initially relied on the witness'
 16 declaration. Each party is limited to two hours of cross-examination (up to four witnesses) to be
 17 conducted over two days on October 27 and 28 from 8:30 a.m. to 1:30 p.m.

18 A party is only entitled to call a witness for whom the opposing party has submitted a
 19 declaration. For Plaintiffs, this would include: Ricky Bluthenthal, Susan Philip, Jonathan Vaing,
 20 Brittany Brandon, Steven Duong, Lisa Rachowicz, Lt. Wayman Young, or Commander Scott Biggs.
 21 For the City, this would include: Omar Ward, Randy Shaw, Jane Roe, Mary Roe, Susan Roe, Barbara
 22 Roe, Isabel Manchester, or Sam Patel.

23 Questioning is limited to the scope of the declarations submitted with the parties' Motion or
 24 Opposition.

25 **3. Post-Hearing Schedule**

26 Following the hearing, the parties are each permitted to file one 15-page filing, which shall
 27 only address how to apply the facts presented at the hearing to the pending motion and shall not
 28 include any new facts or legal theories not previously presented. For the avoidance of doubt, neither

the sur-reply nor the sur-sur reply shall be used to expand the scope of the evidence or arguments presented in the original motion. Plaintiffs' sur-reply is due two weeks after the hearings conclude on November 11, 2025 and the City's sur-sur reply is due two weeks later on November 25, 2025.

Plaintiffs portion of the joint statement includes no critique of this proposal, nor any affirmative counter-proposal for how to structure an evidentiary hearing.

Dated: October 2, 2025

DAVID CHIU
City Attorney
YVONNE R. MERÉ
Chief Deputy City Attorney
TARA M. STEELEY
JOHN H. GEORGE
KAITLYN M. MURPHY
SABRINA M. BERDUX
ABIGAIL H. WALD
Deputy City Attorneys

By: /S/ Kaitlyn Murphy
KAITLYN MURPHY

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

Dated: October 2, 2025

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: ** /S/ Ashon Minoiefar
ASHCON MINOIEFAR

Attorneys for Plaintiffs
JANE ROE, MARY ROE, SUSAN ROE, JOHN ROE,
BARBARA ROE, PHOENIX HOTEL SF, LLC, FUNKY
FUN, LLC, and 2930 EL CAMINO, LLC

***Pursuant to Civil L.R. 5-1(i)(3), the electronic signatory has obtained approval from this signatory.*

PROOF OF SERVICE

**Jane Roe, et al. v. City and County of San Francisco, et al.
USDC-Northern California Case No. 4:24-cv-01562-JST**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the county where the mailing took place, My business address is 650 California Street, 26th Floor, City and County of San Francisco, CA 94108-2615.

On the date set forth below, I caused to be served true copies of the following document(s) described as

**JOINT CASE MANAGEMENT STATEMENT FOLLOWING CASE MANAGEMENT
CONFERENCE (ECF NO. 108)**

to:

Shanin Specter, Esq.
(Admitted Pro Hac Vice)
Alex Van Dyke, Esq.
KLINE & SPECTER, P.C.
1525 Locust Street
Philadelphia, PA 19102

Co-Counsel for Plaintiffs

Telephone: (215) 772-1000
shanin.specter@klinespecter.com
alex.vandyke@klinespecter.com
escalanteyleana@uclawsf.edu

David Chiu, Esq., City Attorney
Yvonne R. Meré, Esq., Chief Deputy City
Attorney
Wayne Snodgrass, Esq., Deputy City
Attorney
Tara M. Steele, Esq., Deputy City
Attorney
Thomas S. Lakritz, Esq., Deputy City
Attorney
John H. George, Esq., Deputy City
Attorney
Kaitlyn M. Murphy, Esq., Deputy City
Attorney
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Counsel for City and County of San Francisco

Steeley Direct: (415) 554-4655
Lakritz Direct: (415) 554-4628
George Direct: (415) 554-4223
Murphy Direct: (415) 554-6762
Facsimile: (415) 554-4699
Mere Direct: (415) 554-4700
Mere Facsimile: (415) 554-4757
Yvonne.Mere@sfcityatty.org
tara.steeley@sfcityatty.org
tom.lakritz@sfcityatty.org
john.george@sfcityatty.org
kaitlyn.murphy@sfcityatty.org
anita.murdock@sfcityatty.org
sophia.garcia@sfcityatty.org
winnie.fong@sfcityatty.org
holly.chin@sfcityatty.org
pamela.cheeseborough@sfcityatty.org
Elizabeth.coolbrith@sfcityatty.org

1 John K. Dipaolo, Esq.
General Counsel
2 Secretary to the Board of Directors
College of the Law, San Francisco
200 McAllister Street
3 San Francisco, CA 94102

Counsel for Plaintiff College of the Law, San Francisco

(related case USDC-Northern California case #4:20-cv-03033-JST)

Telephone: (415) 565-4787
Facsimile: (415) 565-4825
dipaolojohn@uchastings.edu

6 Lauren Hansen, Esq.
Melissa A. Morris, Esq.
7 Public Interest Law Project
449 15th Street, Suite 301
8 Oakland, CA 94612-06001

Counsel for Proposed Intervenor Hospitality House; Coalition on Homelessness; and Faithful Fools

(related case USDC-Northern California case #4:20-cv-03033-JST)

Office: (510) 891-9794
Fax: (510) 891-9727
lhansen@pilpca.org
mmorris@pilpca.org

13 Lili V. Graham, Esq.
Disability Rights California
350 S. Bixel Street Suite 290
14 Los Angeles, CA 90017-1418

Counsel for Proposed Intervenor Hospitality House; Coalition on Homelessness; and Faithful Fools

(related case USDC-Northern California case #4:20-cv-03033-JST)

Office: (213) 213-8000
Fax: (213) 213-8001
lili.graham@disabilityrightscal.org

19 Michael David Key, Esq.
Jessica Berger, Esq.
20 Bay Area Legal Aid
1454 43rd Avenue
21 San Francisco, CA 94122

Counsel for Proposed Intervenor Hospitality House; Coalition on Homelessness; and Faithful Fools

(related case USDC-Northern California case #4:20-cv-03033-JST)

Office: (415) 982-1300
Fax: (415) 982-4243
mkeys@baylegal.org
jberger@baylegal.org

John Thomas H. Do, Esq.
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111

Counsel for Amicus Curiae
(ACLU Foundation of Northern California)
(related case USDC-Northern California case
#4:20-cv-03033-JST)

Office: (415) 621-2943
jdo@aclunc.org

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 2, 2025, at San Francisco, California.



Kirsten Benzien